whole income of the property, being the corresponding proportion of the value of the property.

It is clear then that two elements must coincide. There must be not only a cesser of interest in property: there must be also a benefit arising by such cesser. And further, the benefit must be capable of valuation by reference to the income of the property which the deceased had enjoyed. The brief exposition already given of the law of the Hindu undivided family is sufficient to show how inept is the language of the Ordinance to embrace the case of the death of a coparcener. Their Lordships are so fully in agreement with what was said by Gratiaen J. in the Supreme Court that they quote and adopt his words: "He (the deceased) merely had a right to be maintained by the karta out of the common fund to an extent which was at the karta's absolute discretion; in addition he could, if excluded entirely from the benefits of joint enjoyment, have taken appropriate proceedings against the karta to ensure a recognition of his future maintenance rights and also to obtain compensation for his earlier exclusion. I find it impossible to conceive of a basis of valuation which, in relation to such an 'interest,' would conform to the scheme prescribed by section 17(6). Nor do I think that, upon a cesser of that so-called 'interest,' a 'benefit' of any value can be said to have accrued to the surviving 'coparcener' when the deceased's 'interest' lapsed." This reasoning appears to their Lordships to be cogent and conclusive. Counsel for the appellant sought a way of escape by urging that at least the surviving coparcener must benefit by the fact that the deceased could no longer claim partition of the family estate. That might or might not be an advantage to him, but the short answer is that it is not a benefit susceptible of valuation in the only way which the Ordinance prescribes.

In the result the claim to duty cannot be upheld either under section 7 or section 8(1)(a) or (b). Subsidiary questions were raised with which it is not necessary to deal. If their Lordships had taken a different view on the main question, it would have been necessary to consider the local situation of certain so-called Mysore bonds. It need not now be discussed. Nor is it necessary to consider whether, as was urged by the respondents, they were not liable to pay the duty upon the son's death, even if it was otherwise exigible. Upon this question their Lordships express no opinion. Finally, a submission was made in regard to immovable property in Ceylon, in which reliance was placed on section 18 of the Partition Ordinance, No. 10 of 1863 and section 7 of the Wills Ordinance, No. 21 of 1844. This matter does not appear to have been raised in the Court of the District Judge. In the Supreme Court it was dealt with summarily by Gratiaen J., and their Lordships concur in the view that he expressed.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

Solicitors: *T. L. Wilson & Co.; Lee & Pembertons.*

ATTORNEY-GENERAL OF CEYLON v. AR. ARUNACHALAM CHETTIAR & ORS. (No. 2)

[J. C. (Viscount Simonds, Lord Reid, Lord Cohen, Lord Somervell of Harrow and the Rt. Hon. L. M. D. de Silva) July 10, 1957]

[Privy Council Appeal No. 17 of 1955]

Estate duty — Hindu undivided family — Mitakshara — Death of sole surviving coparcener — Subsequent adoption by widow — Continuity of family preserved — Property in coparcener's hands "joint property of" the family — Statutory exemption from estate duty — Ceylon Estate Duty Ordinance, No. 1 of 1938, s. 73.

In this case, the father, the sole surviving coparcener of a Hindu undivided family, to which also a number of females belonged, died in 1938 shortly after the Ceylon Estate Duty Ordinance, 1938, came into operation, which, by section 73, then provided that "where a member of a Hindu undivided family dies, no estate duty shall be payable on any property proved to the satisfaction of the commissioner to be the joint property of that Hindu undivided family." No other coparcener (after the death of his son in 1934) had come into existence during the father's lifetime, but powers of adoption in his deceased son's widow and in his own widows were, in fact, exercised after his death. At all material times the female members of the family had the right of maintenance and other rights which belonged to them as such members. The appellant claimed estate duty in respect of the father's estate in Ceylon. The Supreme Court of Ceylon held that estate duty was not payable.

Held: (1) the father was at his death a member of a Hindu undivided family, the same undivided family of which his son, when alive, was a member, and of which the continuity was preserved after the father's death by the adoptions;

(2) it was only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it could be determined whether the family property could properly be described as "joint property" of the undivided family. While it might be correct to describe the sole surviving coparcener as the "owner" of the family property, that which he "owned" was joint family property. His ownership was such that on the adoption of a son it assumed a different quality; it was such, too, that female members of the family had a right to maintenance out of it. The extent to which he could alienate it was an irrelevant consideration, for if he did not alienate it, it remained joint family property. Accordingly, while the undivided family persisted, the property in the hands of a single coparcener could properly be described as the "joint property" of that family, and was therefore exempt from estate duty under section 73 of the Ordinance of 1938.

Cases referred to :—

(1) *Pratapsing Shivsing v. Agarsingji Raisingji* (1918) 46 I.A. 97, 107.

(2) *Anant Bhikappa Patil v. Shankar Ramchandra Patil* (1943) 70 I.A. 232, 239.

PRIVY COUNCIL APPEAL.

Appeal from a judgment and decree of the Supreme Court of Ceylon (October 12, 1953) reversing a judgment and order of the District Court of Colombo (November 8, 1949).

The facts are stated in the immediately preceding reported appeal, No. 16 of 1955, which was heard together with this appeal.

The question in this appeal was whether the property assessed to estate duty as property passing on the death of Arunachalam senior (the father) was, on the evidence and the authorities, satisfactorily proved to be the joint property of a Hindu undivided family and, therefore, exempt from payment of duty under section 73 of the Estate Duty Ordinance, 1938.

Counsel and Solicitors for the appellant and the respondents were the same as in the preceding appeal.

The judgment of their Lordships was delivered by :—

Viscount Simonds : —Their Lordships have in their opinion in the preceding appeal, No. 16 of 1955, stated the facts which are relevant to this appeal also and made some references to the relevant law. They do not repeat them here.

The question which arises in this appeal is whether an assessment made by the Commissioner of Estate Duty under the Estate Duty Ordinance, No. 1 of 1938, in respect of the estate of one Rm. Ar. Ar. Rm. Arunachalam Chettiar can be upheld. This gentleman, who died on February 23, 1938, shortly after the 1938 Ordinance came into operation, was in the previous, and will in this, opinion be called the father. The District Judge upheld the assessment, but his decision was reversed by the Supreme Court of Ceylon (Gratiaen and Gunasekara JJ.). Hence this appeal by the Attorney-General of Ceylon.

The 1938 Ordinance introduced a new provision in regard to Hindu undivided families. By section 73 (in its unamended form) it provided as follows : "Where a member of a Hindu undivided family dies, no estate duty shall be payable on any property proved to the satisfaction of the commissioner to be the joint property of that Hindu undivided family."

The father, as appears from the facts stated in the previous opinion, became upon the death of his son in 1934 the sole surviving coparcener of a Hindu undivided family to which also a number of females belonged. No other coparcener came into existence during his lifetime, but at all material times there subsisted a power of adoption in his son's widow, a member of the family, and after his own death a similar power in his widows. These powers were in fact exercised after his death as appears from the table which is incorporated in the previous opinion. Moreover, at all material times the female members of the family had the right of maintenance and other rights which belong to female members of a Hindu undivided family.

The question, then, is a narrow one of construction, whether (a) the father was at his death a member of a Hindu undivided family, and (b) the property of which he was the sole coparcener was the joint property of that Hindu undivided family. Upon (a) no doubt arises : it is conceded that he was a member of a Hindu undivided family. It must be observed that it was the same undivided family of which the son when alive was a member and of which the continuity was preserved after the father's death by the adoptions that have been mentioned. For his death did not put an end to the family line. Gratiaen J., in his judgment in the Supreme Court, quotes the language of this Board in two cases which appear to be apt to the present appeal. In *Pratapsing Shivsing v. Agarsingji Raisingji*[1] it was said : "Hindu lawyers do not regard the male line to be extinct or a Hindu to have died without male issue until the widow renders the continuation of the line by adoption impossible"; and in *Anant Bhikappa Patil v. Shankar Ramchandra Patil*[2] it was said : "a Hindu family cannot be finally brought to an end while it is possible in nature or law to add a male member to it." These and similar quotations which might be multiplied supply the context in which the second part of the question must be considered, *viz.*, whether, while the undivided family thus persists, the property in the hands (to use a neutral expression) of a single coparcener can properly be described as the "joint property of" that family.

The nature of the interest of a single surviving coparcener was the subject of exhaustive evidence by expert witnesses and their Lordships were referred to and studied numerous authorities in which in reference to his interest language was used not incompatible with his being regarded as the "owner" of the family property. But though it may be correct to speak of him as the "owner," yet it is still correct to describe that which he owns as the joint family property. For his ownership is such that upon the adoption of a son it assumed a different quality : it is such, too, that female members of the family (whose numbers may increase) have a right to maintenance out of it and in some circumstances to a charge for maintenance upon it. And these are incidents which arise, notwithstanding his so-called ownership, just because the property has been and has not ceased to be family property. Once again their Lordships quote from the judgment of

Gratiaen J.: "To my mind it would make a mockery of the undivided family system if this temporary reduction of the coparcenary unit to a single individual were to convert what was previously joint property belonging to an undivided family into the separate property of the surviving coparcener." To this it may be added that it would not appear reasonable to impart to the legislature the intention to discriminate, so long as the family itself subsists, between property in the hands of a single coparcener and that in the hands of two or more coparceners. It was urged that already the difference is there since a single coparcener can alienate the property in a manner not open to one of several coparceners. The extent to which he can alienate so as to bind a subsequently adopted son was a matter of much debate. But it appears to their Lordships to be an irrelevant consideration. Let it be assumed that his power of alienation is unassailable: that means no more than that he has in the circumstances the power to alienate joint family property. That is what it is until he alienates it, and, if he does not alienate it, that is what it remains. The fatal flaw in the argument of the appellant appeared to be that, having labelled the surviving coparcener "owner," he then attributed to his ownership such a congeries of rights that the property could no longer be called "joint family property." The family, a body fluctuating in numbers and comprised of male and female members, may equally well be said to be owners of the property, but owners whose ownership is qualified by the powers of the coparceners. There is in fact nothing to be gained by the use of the word "owner" in this connexion. It is only by analysing the nature of the rights of the members of the undivided family, both those in being and those yet to be born, that it can be determined whether the family property can properly be described as "joint property" of the undivided family. Judging by that test their Lordships have no doubt that the Supreme Court came to the right conclusion.

Had their Lordships taken a different view from that of the Supreme Court it might have been necessary to review some at least of the large number of cases cited at the Bar, from which chosen passages appeared to favour the contentions of the appellant. But, as was said in the case of the previous appeal, the matters upon which the parties and their expert witnesses were agreed were of far greater significance than those upon which they differed, and their Lordships doubt whether even if the appellant's evidence stood alone, they could have come to any different conclusion as to the meaning and scope of the words "joint property of that Hindu undivided family" as used in the 1938 Ordinance.

Their Lordships will humbly advise Her Majesty that this appeal should be dismissed. The appellant will pay the costs of the appeal.

Appeal dismissed.

STANTON NELSON & CO. LTD. v. S. E. MIZRAHIE; C. K. TAYLOR, 3rd Party

[O. C. J. (Buttrose J.) July 19, 1957]

[Singapore — Suit No. 1616 of 1955]

Contract — Gaming and wagering contract — Rubber Dealers Ordinance (Cap. 199) s. 3 — Forward contracts — Civil Law Ordinance (Cap. 24), s. 6.

The plaintiffs in this case were rubber brokers and members of the Singapore Chamber of Commerce Rubber Association in the class of brokers. They claimed damages for breach of several contracts in writing for purchase and sale of rubber or in the alternative the balance of expenses incurred by them and agreed, alternatively reasonable remuneration earned by them in respect of services rendered as the defendant's brokers.

All the contracts in this case subject to a few exceptions were forward F.O.B. contracts involving delivery at the time they were made.

A number of defences were raised on the pleadings but the only real issue of substance which emerged at the trial was that of illegality. This defence was based on two grounds: (i) that the contracts were illegal and void because the defendant was not licensed under the Rubber Dealers Ordinance to purchase rubber and that neither the plaintiffs nor the defendant complied with the requirements of section 13 or 14 of the Ordinance in respect of them; (ii) that the contracts were void as gaming and wagering contracts within the meaning of section 6 of the Civil Law Ordinance.

Held: the words "purchase rubber" as used in section 3 of the Rubber Dealers Ordinance refer to present purchases of the commodity and not to forward or executory contracts to purchase which do not invoke delivery at the time they were made and therefore the defendant not being a holder of the licence under the Ordinance did not render the contracts illegal.

Held further: it is the essence of a wagering contract that one party under it is to win and the other to lose, upon a future event which at the time of the contract, is of an uncertain nature. If either of the parties may win but cannot lose or may lose but cannot win, it is not a wagering contract.

Held also: where a dealer is prepared to deliver or take delivery, as the case may be, and he has not entered into a secret understanding that he will in no case do so, the contract is no wager.

Universal Stock Exchange v. Strachan(6) followed. **In re Gieve**(7) and **Robinson v. Mollett**(8) distinguished.

Cases referred to:—

(1) *Syn Thong & Co. v. Tong Joo (Hoa) & Co.* (1929) S.S.L.R. 39.

(2) *Baker v. Sharma* K.L. — Civil Suit No. 164 of 1936 — unreported. 3 M.C. 15.

(3) *Ng Kean Tek v. Kam Hock Lye* (1950) M.L.J. 279.

(4) *Lambert v. Rowe* (1914) 1 K.B. 38.

(5) *Mahmoud and Ispahani* (1921) 2 K.B. 716.

(6) *Universal Stock Exchange v. Strachan* (1896) A.C. 166.

(7) *In re Gieve* (1899) 68 L.J. Q.B. 509.

(8) *Robinson v. Mollett* L.R. 7 H.L. 802.

(9) *Woodward & Anor. v. Wolfe* (1936) 3 All E.R. 529.

(10) *Lloyd v. Grace, Smith & Co.* (1912) A.C. 716.